Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 35474
Docket No. CL-35944
01-3-99-3-947

The Third Division consisted of the regular members and in addition Referee Andrèe Y. McKissick when award was rendered.

PARTIES TO DISPUTE: (Transportation Communications International Union
(
(National Railroad Passenger Corporation (Amtrak)

STATEMENT OF CLAIM:

"Claim of the System Committee of the Organization (GL-12509) that:

The following claim is hereby presented to the Carrier by the Claimant, David Schecter, account the Carrier violated Rules 7, 14, and other rules of the July 21, 1972 Agreement between Amtrak and TCU, including all revisions, when they assigned and permitted Jose Rosa to perform the duties of the position symbol HUD-2, tour of duty 2 pm-11 pm, on the following date(s), March 1, 1998, at the location of Ticket Office, at Hudson, NY.

Claimant now be allowed eight (8) hours pay for each date at the rate of time and one-half, based on the pro-rata daily rate of $128.64, due to this violation.

Claimant's regular position is Time Keeper, tour of duty 7 am – 3 pm, rate of pay $15.66 per hour, location Albany-Renssflaer.

Claimant is qualified, was ready, willing, and able to perform the duties claimed, had the Carrier permitted (him/her) to do so. This claim has been presented in accordance with Rule 25 of the above mentioned Agreement and should be allowed."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute were given due notice of hearing thereon.

The Organization alleges that the Carrier violated Rules 7 and 14 of the Agreement. They read as follows, in pertinent part:

"RULE 7 – SHORT VACANCIES

When short vacancies are filled, they shall be filled in the following order of precedence:

(1) By calling the senior qualified unassigned employee available at the time rate not then filling some other position. (Such unassigned employee not having claim to work more than forty (40) straight time hours in his workweek.)

(2) By using the senior qualified regularly assigned employee at the location who has served notice in writing of his desire to work such assignment for the duration of the vacancy.

(3) By the hiring of a new employee . . ."

RULE 14 – OVERTIME

(a) Except as otherwise provided, time worked in excess of eight (8) hours, exclusive of the meal period, on any workday shall be considered overtime, and paid for on the actual minute basis at time and one-half rate . . ."

It is contended that the Carrier allegedly failed to call the Claimant, Mr. David Schecter, via the telephone for a 2:00 P.M. to 11:00 P.M. vacancy at Hudson, New York,

on Sunday, March 1, 1998. It is the Organization's position that based on a call sheet the Claimant was called only one time. Thus, the Organization argues that a singular phone call is insufficient, inadequate and unreasonable under these circumstances. The Organization requests that a penalty payment at the time and one-half rate for the date claims based on his pro-rata daily rate of 128.64 for eight hours of pay, due to this violation.

The Carrier rebuts the Organization's contention asserting that when the regular assigned Ticket Clerk at Hudson, New York, marked off sick, the Supervisor attempted to call the Claimant three times over a 30 minute period, and the Claimant's number was busy each time. Thereafter, the Supervisor called other employees as per seniority and the vacancy was filled with a junior employee, Jose Rosa, at 11:52 A.M.

The Carrier maintains that the mere filing of a claim cannot be sustained without supporting data. In addition, the Carrier points out that the burden of proof rests with the Claimant. Lastly, the Carrier asserts that the right to fill a vacancy is within management's sole domain.

Based on all of the above, the Board finds that this claim must be denied, as the Organization has not met its burden of demonstrating that a violation occurred and harm resulted. Evidence reveals that the Carrier fully complied with the provisions of the Agreement. An Investigation into this claim found that acting Supervisor, John Keicher, on March 1, 1998, made three calls to the Claimant and received three busy signals. This procedure was corroborated by three individuals. Thus, the Carrier filled the vacancy with a junior employee out of necessity. (Amtrak Exhibit 2) Accordingly, this claim is denied for the foregoing reasons.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Dated at Chicago, Illinois, this 22nd day of May, 2001.